

In the Matter of	)	
	)	
CITY OF SUMMIT, NEW JERSEY	)	File No. 0003734540
	)	
Request for Waiver of Sections 20.9(a)(6), 22.621	)	
and 22.651 of the Commission's Rules	)	

3. According to Summit, “even before [Westchester’s] requested increases, interference was a real possibility for Summit,” but “[w]ith the requested increases, interference to Summit becomes more of a possibility and concern.”<sup>7</sup> Summit indicates that it has worked with Westchester to find a mutually agreeable solution under which Summit would substitute frequency pair 476/479.1625 MHz for 476/479.2125 MHz, thus resolving any co-channel interference concerns while ensuring that Summit would retain four Part 22 channels.<sup>8</sup> The subject waiver would effectuate that agreement, resolving Summit’s interference concerns. Summit further indicates that only one licensee in the New York/New Jersey metropolitan urban area is authorized on 476.1625 MHz, USA Mobility Wireless, Inc. (USAM), under call sign KPD955, and that USAM’s site is located 75.3 km from Summit’s site.<sup>9</sup> USAM submitted a Letter of Consent, indicating no objection to Summit’s request.<sup>10</sup>

4. Summit seeks waivers of Sections 20.9(a)(6), 22.621, and 22.651 of the Commission’s rules,<sup>11</sup> pursuant to Section 1.925.<sup>12</sup> Summit asserts that the Commission “has already found it in the public interest to allow Summit to operate on Part 22 channels due to frequency congestion in the New York/New Jersey area” in the *2005 Order*.<sup>13</sup> Summit further argues that the “potential for interference between Westchester and Summit leaves no reasonable alternative except substitution of the channel at Summit,” and that granting its request would “resolve[] the interference concerns and is in the public interest.”<sup>14</sup> Summit also observes that, because it would relinquish frequency pair 476/479.2125 MHz as a condition of obtaining authorization to use frequencies 476.1625 and 479.1625 MHz, its request “supports the [*2005 Order*] in that Summit will continue to have use of four Part 22 channels.”<sup>15</sup> Finally, Summit asserts that “Contingent upon the FCC granting the application, Summit will relinquish 476/479.2125 MHz and withdraw its opposition to the Westchester application.”

5. On January 19, 2010, the Public Safety and Homeland Security Bureau (Bureau) issued a Public Notice seeking comment on the application and waiver request.<sup>16</sup> We received no comments or reply comments addressing the application and Waiver Request.

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granting the application, Summit will relinquish 476/479.2125 MHz and withdraw its opposition to the Westchester application.” *Id.* at 5.

<sup>7</sup> Waiver Request at 2. Summit attached a contour study that shows an overlap between Westchester’s and Summit’s existing service contours. *See* Waiver Request, Attachment One.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 3. Summit indicates that the co-channel licensee operating under call sign KPD955 is Arch Wireless License Co, LLC (“Arch”). We observe, however, that Arch was a subsidiary of USA Mobility, Inc., which in 2008 changed the licensee name of record for call sign KPD955 to USA Mobility Wireless, Inc.

<sup>10</sup> The Letter of Consent was submitted by Arch Wireless License Co, LLC, as a subsidiary of USA Mobility, Inc., before USA Mobility, Inc. changed the licensee name of record for call sign KPD955 to USA Mobility Wireless, Inc.

<sup>11</sup> 47 C.F.R. §§ 20.9(a)(6), 22.621 and 22.651.

<sup>12</sup> Waiver Request at 4.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *See* Public Safety And Homeland Security Bureau Seeks Comment on Request for Waiver Filed By the City of Summit, New Jersey, to Add Part 22 Frequencies 476.1625 and 479.1625 MHz to Its Public Safety Radio System, *Public Notice*, 25 FCC Rcd 376 (PSHSB 2010).

### III. DISCUSSION

6. Section 1.925 of the Commission's rules provides that to obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: "(i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."<sup>17</sup> Applicants seeking a waiver face a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>18</sup> We evaluate the wavier request using the first prong of Section 1.925 below, and find that Summit has met the prong one waiver criteria.

7. *Section 20.9(a)(6)*. Rule Section 20.9(a)(6) presumes that paging and radiotelephone frequencies will be treated as common carriage services and regulated as commercial mobile radio services.<sup>19</sup> This regulatory structure is not applicable to, or appropriate for, frequencies licensed to public safety licensees. Therefore, assuming we otherwise find it appropriate to allow Summit's use of the requested frequencies, the underlying purpose of Section 20.9(a)(6) would not be served by its application to the present case.

8. *Section 22.621*. The underlying purpose of Section 22.621 is to reserve certain frequencies – including frequency 476.1625 MHz – for point-to-multipoint operations pursuant to Part 22 in certain urban areas.<sup>20</sup> As indicated above, in the New York-Northeastern New Jersey metropolitan urban area, frequency 476.1625 MHz currently is licensed to USAM, under call sign KPD955, whose transmitter site is located 75.3 km from Summit's site. USAM submitted a Letter of Consent, indicating no objection to Summit's request, provided that Summit avoids causing any harmful interference to USAM's operations and works to eliminate any such interference that might occur.<sup>21</sup> Because frequency 476.1625 MHz already has been assigned and is not available to Part 22 common carrier entities on an exclusive basis in the New York-Northeastern New Jersey metropolitan urban area,<sup>22</sup> we find that the underlying purpose of Section 22.621 would not be served by application to the present case. We also find that Summit's proposed use of frequency 476.1625 MHz should not cause harmful interference to any Part 22 entities, but to the extent such interference may occur to USAM as a result of Summit's use of frequency 476.1625 MHz, Summit must eliminate any such occurrences.

<sup>17</sup> 47 C.F.R. § 1.925(b)(3).

<sup>18</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

<sup>19</sup> 47 C.F.R. § 20.9(a)(6).

<sup>20</sup> See 47 C.F.R. § 22.621. See also *City of Burbank, California, Memorandum Opinion and Order*, 18 FCC Rcd 23770, 23772 ¶ 6 (2003) (stating that the purpose of the rule "is to assign paging control channels under Part 22 with sufficient guard band spacing to adjacent private land mobile radio operations under Part 90").

<sup>21</sup> The Letter of Consent was submitted by Arch Wireless License Co, LLC, as a subsidiary of USA Mobility, Inc., before USA Mobility, Inc. changed the licensee name of record for call sign KPD955 to USA Mobility Wireless, Inc.

<sup>22</sup> We have previously stated, "[a]s a matter of policy, the Commission would typically only assign a trunked mobile channel listed under Section 22.651 to a Part 22 applicant if that channel was previously unoccupied in that urban area." *Baldwin Fire District, New York, Order*, 24 FCC Rcd 11857, 11868, n.93 ¶ 26 (PSHSB 2009). An analogous policy applies to channels listed under Section 22.621. Specifically, as a matter of policy, the Commission would typically assign a point-to-multipoint channel listed under Section 22.621 to a Part 22 applicant if that channel was previously unoccupied in that urban area. Because the 476.1625 MHz frequency already is assigned in the New York-Northeastern New Jersey metropolitan urban area to USAM, it is not available for assignment to other Part 22 entities.

9. *Section 22.623(b)*. Summit will also need a waiver of Section 22.623(b) in order to operate on frequency 476.1625 MHz.<sup>23</sup> Section 22.623(b) specifies system configuration requirements for point-to-multipoint channels assigned pursuant to Part 22. Because Summit would not be conducting point-to-multipoint operations on this frequency, these system configuration requirements are not applicable to, or appropriate for, frequencies licensed to public safety agencies. Therefore, the underlying purpose of Section 22.623(b) would not be served by application to the present case. Consequently, we waive Section 22.623(b) on our own motion.

10. *Section 22.651*. The underlying purpose of Section 22.651 is to reserve certain frequencies – including frequency 479.1625 MHz – for trunked mobile operations pursuant to Part 22 in certain urban areas.<sup>24</sup> Although a search of our licensing records indicates that no trunked mobile licensee currently operates in the New York-Northeastern New Jersey metropolitan urban area on frequency 479.1625 MHz,<sup>25</sup> the frequency has been assigned in prior waiver orders to the Syosset, New York Fire District (Syosset), Station WPYJ816, and Baldwin Fire District, New York (Baldwin), Station WQKU273, both of which are public safety licensees located in that same urban area.<sup>26</sup> Because frequency 479.1625 MHz already has been licensed and is not available to Part 22 common carrier entities on an exclusive basis in the New York-Northeastern New Jersey metropolitan urban area,<sup>27</sup> we find that the underlying purpose of Section 22.651 would not be served by application to the present case.

11. *Co-channel and adjacent channel licensees*. While the Commission's Part 22 rules do not require a showing of interference protection for incumbent licensees operating on Part 22 spectrum, we have the discretion to consider the application land mobile interference protection criteria.<sup>28</sup> We exercise this discretion to elaborate on our statement above that frequency 479.1625 MHz is already assigned to public safety entities, and to fulfill our due diligence to examine whether Summit would cause harmful interference to these public safety entities or any other incumbent operations. There are no public safety licensees operating co-channel on frequency 476.1625 MHz since it is assigned to USAM. As indicated above, frequency 479.1625 MHz is assigned to Syosset and Baldwin.<sup>29</sup> There are currently no rules for decentralized trunked systems, such as that proposed by Summit, to protect mobile-only or control station operations in the 470-512 MHz band. Summit, however, as a licensee operating a decentralized trunked system in this band, will be required to monitor its channels before transmitting pursuant to Section 90.187(b) of the Commission's rules.<sup>30</sup> Given this regulatory framework, we find that Summit's proposed use of frequency 479.1625 MHz should not cause harmful interference to Syosset or Baldwin's incumbent co-channel operations.

12. With respect to adjacent channel licensees, we observe that the Jersey City Police Department, New Jersey, operates on the lower adjacent frequency pair, 476/479.1500 MHz under call sign WQBL368, while the City of Bayonne, New Jersey, operates on the upper adjacent frequency pair, 476/479.1750 MHz under call sign WQBL378. We note that both licensees operate with 11.25 kHz

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<sup>23</sup> 47 C.F.R. § 22.623(b).

<sup>24</sup> See 47 C.F.R. § 22.651. See also Baldwin Fire District, New York, *Order*, 24 FCC Rcd 11857, 11867-68 ¶ 26 (2009).

<sup>25</sup> See 47 C.F.R. § 22.625(b)(1) (defining the New York-Northeastern New Jersey metropolitan urban area as an 80 kilometer circle around the center coordinates listed in § 22.625(b)(1)). Summit is within this urban area.

<sup>26</sup> See Syosset Fire District, *Memorandum Opinion and Order*, 18 FCC Rcd 16635 (WTB PSPWD 2003).

<sup>27</sup> See *supra* n.22.

<sup>28</sup> See, e.g., Baldwin Fire District, New York, *Order*, 24 FCC Rcd 11857, 11868 ¶ 28.

<sup>29</sup> Syosset uses frequency 479.1625 MHz for mobile and control station operations. See ULS call sign WPYJ816. Baldwin uses frequency 479.1625 MHz exclusively for mobile operations. See ULS call sign WQKU273.

<sup>30</sup> See 47 C.F.R. § 90.187(b).

bandwidth, and Summit proposes to operate with the same bandwidth. Because Summit's proposed frequency pair is separated by 12.5 kHz from the frequencies assigned to these adjacent incumbents, Summit's bandwidth would not overlap the incumbents' bandwidths. Accordingly, we conclude that no further analysis is necessary with respect to adjacent channel licensees. Based on these facts, we find that Summit's proposed operation would not cause harmful interference to the incumbent adjacent channel licensees.

13. *Public Interest.* Based upon the record, we find that Summit has demonstrated that a grant of its Waiver Request would be in the public interest. The Commission already has determined that Summit requires four channel pairs comprised of frequencies reserved under Sections 22.621 and 22.651 "in order to promote effective public safety communications."<sup>31</sup> Specifically, the Commission previously noted Summit's contention that allowing it to use frequencies reserved under Sections 22.621 and 22.651 would "cure deficiencies in the existing public safety radio systems and provide interoperability among Summit's fire, police, EMS, and other departments," and would "assist the State of New Jersey's initiative to increase domestic preparedness through pervasive interoperability."<sup>32</sup> The Commission found that authorizing Summit to use Part 22 frequencies would further the public interest "by affording Summit's public safety community the necessary spectrum to allow it to protect the lives and property in its care."<sup>33</sup> To this end, the Commission observed that Section 1 of the Communications Act, as amended, defines one of the Commission's over-arching purposes as "promoting safety of life and property through the use of ... radio communication."<sup>34</sup> The Commission also found it significant that granting Summit's initial request for frequencies under Sections 22.621 and 22.651 could "promote interoperability capability among the public safety community in the New York City metropolitan area."<sup>35</sup> We find that all of these prior determinations apply equally to the instant Waiver Request, as in the instant action, we are merely substituting one frequency pair for another.<sup>36</sup> We also find it significant that granting the Waiver Request will eliminate the interference potential that apparently exists between Summit's and Westchester's operations, thus providing the channel capacity that both parties require to carry out their critical public safety operations.

14. Based on the foregoing, we conclude that granting the instant applications would not frustrate the underlying purpose of the rules at issue and is in the public interest. We therefore find that Summit satisfies the first prong of the waiver standard set forth in Section 1.925. Accordingly, we grant Summit a waiver of Sections 20.9(a)(6), 22.621, 22.623(b) and 22.651 pursuant to Section 1.925(b)(3) of the Commission's rules to operate its public safety communications system on frequency pair 476/479.1625 MHz.

#### IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3) of the Commission's rules, 47 C.F.R. § 1.925, that the Request for Waiver, as amended, associated with File No. 0003734540 filed by the City of Summit, New Jersey IS GRANTED, to the extent indicated herein.

<sup>31</sup> 2005 Order, 20 FCC Rcd 16185 ¶ 11.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* (citing 47 U.S.C. § 151).

<sup>35</sup> *Id.*

<sup>36</sup> Because Summit is relinquishing frequency pair 476/479.2125 MHz as a condition of a grant of its request, its volume of licensed spectrum will not change as a result of this action.

16. IT IS FURTHER ORDERED that File No. 0003734540 SHALL BE PROCESSED consistent with this *Order* and the Commission's rules.

17. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers  
Chief, Policy Division  
Public Safety and Homeland Security Bureau